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Recent Trial Court Decisions

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claratory judgments act, to determine the validity of a contract. Defendant demurred to the complaint on the grounds of insufficient facts and want of jurisdiction. Demurrer sustained below.

Held—Declaratory judgments act provides that: "Any person interested under a * * * written contract * * * may have determined any question of construction or validity arising under the instrument, * * *."

Complaint fails to state that such question of construction or validity of contract has arisen. Mere fear that such question may arise in the future insufficient. This act was not intended to repeal the statute prohibiting judges from giving legal advice, nor to impose the duties of the profession upon the courts, nor to provide advance judgments as the basis of commercial enterprises, nor to settle mere academical questions.

No. 11,980

Auguste Nicolas, versus Caroline I. Grassle, et al.

Decided April 16, 1928.

Highway—Obstruction—Injunction

Facts—Nicolas brought suit against Grassle et al., to enjoin the obstruction of a road which he claimed was a public highway.

Injunction denied by Lower Court.

Held—Congress has enacted that "The right of way for the construction of highways over public lands not reserved for public use is hereby granted." The word, "construction" as used in Federal Statute, does not require that work must be done on highway. Any use of highway over public land, however slight, and though it gives access only to one property owner, constitutes a highway. Federal Statute was an express dedication and the use by those for whom it was necessary was an acceptance.

Reserved:

No. 12,061

D. L. Coursey, vs. The Industrial Commission of Colorado.

Decided April 2, 1928

Dept. One

Industrial Commission—Review of Award

Facts—On April 28, 1926, C. was awarded compensation for injuries. On May 12, 1926 the referee set aside this award without notice to C. Upon review by the District Court, the dismissal was set aside and the original award was adjudged to be in full force. The Commission then ordered further hearings, of which C. had full notice, and further compensation was denied.

Held—Under C. L. '21, 4484, the Commission may order hearings diminishing, maintaining or increasing the compensation previously awarded, even though the original award has been affirmed by the District Court, because such affirmance adds nothing to the award.

Affirmed.

Recent Trial Court Decisions Of General Interest

(Editor's Note.—It is intended in each issue of the Record to note interesting current decisions of all local Trial Courts, including the United States District Court, State District Courts, the County Court, and the Justice Courts. The co-operation of the members of the Bar is solicited in making this department a success. Any attorney having knowledge of such a decision is requested to phone or mail the title of the case to Victor Arthur Miller, who will digest the decisions for this department. The names of the Courts having no material for the current month will be omitted, due to lack of space.)

IN THE DISTRICT COURT

DIVISION VI.

No. 29570

*The People of the State of Colorado vs.
C. C. Bennett, et al.*

Order.

The Court. In this matter, case No.

29570, *The People of the State of Colorado versus C. C. Bennett, et al.*, in view of certain publications in the public press the Court deems it proper to make a statement at this time as it would appear to the court from the various publications which the court has read and now has before the court that if this sort of comment is to continue in this case it is going to interfere with the due administration of justice.

These articles in a general way purport to forecast what motions are going to be filed, and what attacks are going to be made, and proceeds to say whether certain compensation that the court has ordered should be paid or not, and interviews different ones as to the policy of obeying the court's orders, all of which if continued is calculated to, and tends to obstruct the courts in the administration of the business before the court. Such action cannot but help, if continued, in prejudicing the people either for or against the defendants, and endangering the people's case or prejudicing the defendants' case.

The court of its own motion, and own suggestion, is making these remarks and comments at this time that all may take notice, and that the attorneys both for the People and the defendants may take notice and govern themselves accordingly.

Second. The court calls attention to the case of *Massie v. People*, 258 Pacific Reporter, p. 226, a decision of our Supreme Court, and especially on page 231 of the opinion, in which the court comments on this kind of interference which practically poisons the mind of a community for either one or the other and makes it impossible to have a fair and impartial trial according to law.

The court says:

"These newspaper articles appeared between March 3 and March 25. They formed a part of

the basis for a change of venue, and the trial did not begin until six weeks later. Defendant was entitled to have them stopped by a collateral proceeding against the newspapers, the record discloses none; he was entitled to call the prosecutor to account if he was responsible for them, no attempt to do so was made. In their brief counsel for defendant says:

"All the jurors who raised their right hands and swore to a 'true verdict render' were so convinced of the guilt of the defendant long before a syllable of testimony ever fell from the mouth of the first witness that argument, logic, reason, even evidence itself, were alike without avail to sway them from the preconceived belief of the guilt of the defendant."

"This is indeed a dark picture, but the brush which painted it was dipped in colors obtained elsewhere than in this record. If any question was asked of a juror on this subject, if any had read these articles or were prejudiced thereby, if any was excluded from service therefor, we are not apprised of it. The record is silent on the subject.

"So numerous, however, have been similar complaints in this jurisdiction in the past, and in some instances apparently so well founded, we cannot, before leaving this branch of the case, refrain from calling the attention of officers and newspapers in the cases of *Ex parte Sturm et al.*, and *Ex parte Burns*, both tried before Judge Eugene O'Dunne, of the Supreme Bench of Baltimore City, sitting in the criminal division. The *Sturm* case is reported in 136 A. 312, and was published in the *Daily Record*, Baltimore, January 24, 1927. The *Burns* case was published in the last mentioned periodical January 5, 1927. Both appear in the February Journal of the American Judicature Society. The opinion in these cases sets forth some of the principles which should guide public officials and the public press in dealing with pending litigation, review the history of the subject, and cite the greatest and soundest authorities. They have received

nation-wide notice and almost universal approval. We recommend to those interested their careful perusal. Reversible error in cases of great public importance, new trials with their attendant difficulties and often enormous expense, and unpleasant and unnecessary litigation involving officers and newspapers having no desire to transgress the law or embarrass its administration, may thus be avoided."

The court is not particularly disturbed at what has happened up to this date, but it is an old saying "That coming events cast their shadows before," and the court regards it as a very significant shadow that these articles have been, and are being published from day to day.

The court does not intend to in any way hamper the public press in publishing proper news, and the courts are public, and what takes place in open court is public unless otherwise ordered by the court.

The court sees no reason to think there will be any necessity of suppressing the news of anything that takes place in court, although the court is of the opinion that the court in a proper case has that power, but it does propose to use what authority the court has in preventing the taking up of moot questions that are liable to come before the court at some time, and using the influence of the press to either carry out a certain policy, or prevent something from being carried out. That is commonly called trying a case in the newspapers. That is what the court intends to stop in the future in this case.

Third. The court particularly enjoins upon the District Attorney and the Special Prosecutors the duty of properly calling to the attention of the court any infringement in this regard in the future as against the law as laid down by our Supreme Court in the Massie case; and the court equally en-

joins and asks the attorneys for the defendants likewise to likewise formally call the court's attention to any wilful infringement of the rights of the defendants according to the law of that case, and the court particularly enjoins the attorneys on both sides of this case not to give out to any of the newspapers matters that they expect to file or bring before the court so that it would be taken up and argued through the newspapers before it ever reaches the court. If any newspaper, or any person or persons, does anything tending to violate the law as laid down in the Massie case, the court desires they be formally informed against collaterally so that they may be dealt with for contempt of court.

The court does not intend, and does not want these remarks to be construed, as intending on the part of the court to go into the past, or as to what has been said or published concerning this case by any newspaper, but from this time on if there is any action that is taken contrary to the law and decisions of our Supreme Court, the court will consider it when properly brought to the attention of the court by the attorneys upon either side, and will to the best of its ability enforce the law as laid down by our Supreme Court.

The court hopes that this warning and caution will be sufficient, but the court thinks that it was its duty at this time to issue the warning so that this case, like other cases, may be tried and decided in a judicial way, and not be interfered with by these charges and counter-charges such as have been published.

Done in open court this 7th day of April, A. D., 1928.

By the Court.

GEO. F. DUNKLEE

Judge.

CHAS. H. SCOTT
President

EDWARD WHITLEY
Treasurer

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